



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. McTIGUE  
DIRECTOR

November 18, 1991  
AO-91-24

Representative Robert A. Antonioni  
Antonioni and Antonioni  
42 Main Street  
Leominster, MA 01453

Re: Political Fund-Raising by Public Employee  
on Leave of Absence

Dear Representative Antonioni:

This letter is in response to your October 17, 1991, letter requesting an advisory opinion regarding restrictions on fund-raising activities by your legislative aide, Mr. Vincent Antonucci, while he is on an extended leave of absence.

You have stated that Mr. Antonucci has taken a leave of absence without pay from his employment in your state office, commencing with the close of business on Monday, September 23, 1991. This leave was voluntarily taken by Mr. Antonucci so that he could immediately commence work full time for your campaign for the State Senate seat vacated by Mary Padula. To date, Mr. Antonucci has been involved only in campaign activities which have no relation to fund raising.

You have further stated that the State Senate on September 30, 1991, has set February 11, 1992, as the date for the Special Primary Election and March 10, 1992, as the date for the Special Election. Mr. Antonucci's unpaid leave of absence from his legislative position will continue until a date subsequent to March 10, 1992.

You have asked whether, and to what extent, Mr. Antonucci may become involved in political fund-raising activities for your campaign while on his unpaid leave of absence. You have also asked generally if there are other restrictions on Mr. Antonucci's activities relative to your State Senate campaign during this time period.

In effect, you have inquired whether Mr. Antonucci is subject to the provisions of sections 13 through 17 of M.G.L. c.55 while on his unpaid leave of absence. I will address each of these provisions separately.

First, Section 13 of M.G.L. c.55 states, in pertinent part:

No person employed for compensation, other than an elected officer, by the commonwealth . . . shall directly or indirectly solicit or receive any gift, payment, contribution, assessment, subscription or promise of money or other thing of value for the political campaign purposes of any candidate for public office . . .

No provision of M.G.L. c.55, including section 13, mandates that a public employee relinquish his or her employment with the commonwealth in order to participate in a political campaign. However, Mr. Antonucci could not solicit contributions directly or indirectly, in person or in writing, while "employed for compensation."

This Office has issued a number of advisory opinions which have concluded that if a person so employed were to take an unpaid leave of absence of at least four months before a primary election (or six months before an election) he or she would not be considered "employed for compensation" by this Office and therefore not subject to the prohibitions of section 13 of M.G.L. c.55.<sup>1</sup> See AO-88-06, AO-89-04, AO-90-19. In order for such unpaid leave of absence to qualify as described in the previous sentence, it could not include any vacation, compensatory or sick time to which a public employee may be entitled. See AO-90-12.

Therefore, it is the Office's opinion that the unpaid leave of absence Mr. Antonucci has taken from his position as your legislative aide is sufficient to remove him from the prohibitions of section 13 of M.G.L. c.55 because it is a leave of at least four months before the primary election in February 1992 provided it does not include any vacation, compensatory or sick time.

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1. The four/six month rule which has often been articulated by the Office is based upon two factors. First, a substantial unpaid leave of absence must be required to remove a "public employee" from the constraints of M.G.L. c.55, s.13 in order to prevent abuse that short-term leaves would be likely to engender. Second, the four/six month rule was articulated to coincide with statutory requirements for the filing of signatures for nominations during the regular election cycle. See M.G.L. c.53, ss.7 and 10. We recognize that different schedules apply to special elections. However, we need not consider a change to the rule since Mr. Antonucci's leave began more than four months prior to the special primary election.

You should also be aware that section 13 applies as well to certain activities of your political committee. In pertinent part, section 13 provides:

The soliciting or receiving of any gift, payment, contribution, assessment, subscription or promise of money or other thing of value by a non-elected political committee organized to promote the candidacy for public office of a person so employed for compensation by the commonwealth . . . shall not be deemed to be a direct or indirect solicitation or receipt of such contribution by such person; provided, however, that no such gift, payment, contribution, assessment, subscription or promise of money or other thing of value may be solicited or received on behalf of such a person from any person or combination of persons if such person so employed knows or has reason to know that the person or combination of persons has an interest in any particular matter in which the person so employed participates or has participated in the course of such employment or which is the subject of his official responsibility (emphasis supplied).

In addition to the prohibitions in section 13, you and Mr. Antonucci should be aware of the requirements of M.G.L. c.55, ss.14-17.

Section 14 of M.G.L. c.55 states: "No person shall in any building or part thereof occupied for state, county or municipal purposes demand, solicit or receive any payment or gift of money or other thing of value for the purposes set forth in section thirteen" (emphasis supplied).

Section 15 of M.G.L. c.55 states:

No officer, clerk or other person in the service of the commonwealth or of any county, city or town shall, directly or indirectly, give or deliver to an officer, clerk or person in said service, or to any councillor, member of the general court, alderman, councilman or commissioner, any money or other valuable thing on account of, or to be applied to, the promotion of any political object whatever (emphasis supplied).

Please note that this section applies to any person in the public service: elected or appointed, paid or unpaid. Although Mr. Antonucci would not be considered by this Office as a person "employed for compensation" during his leave of absence, he would be a "person in the service of the commonwealth" for the purposes of section 15. While he has temporarily decided to take a leave of absence without pay, it is the Office's understanding that he has not resigned his position as your legislative aide. Therefore, it is the opinion of this Office that the restrictions set forth in section 15 would apply to Mr. Antonucci (as well as to yourself as an incumbent office holder).

Section 15 prohibits either you or Mr. Antonucci from accepting any monies or checks directly from a contributor who is also a public employee or incumbent office holder. This category would include other legislative employees as well as other employees of the Commonwealth, or of any county, city or town. Your committee could, however, accept contributions from such persons on your behalf.

Section 16 of M.G.L. c.55 states: "No person in the public service shall, for that reason, be under obligation to contribute to any political fund, or to render any political service, and shall not be removed or otherwise prejudiced for refusing to do so" (emphasis supplied).

Section 17 of M.G.L. c.55 states: "No officer or employee of the commonwealth or of any county, city or town shall discharge, promote, or degrade an officer or employee, or change his official rank or compensation, or promise or threaten so to do, for giving, withholding or neglecting to make a contribution of money or other valuable thing for a political purpose" (emphasis supplied).

For reasons similar to those noted with respect to section 15, this Office would consider Mr. Antonucci an "employee of the commonwealth" (although not "employed for compensation") even while on an unpaid leave of absence. Only in section 13 is compensation relevant.

This advisory opinion has been rendered solely on the basis of representations made in your letter and solely in the context of M.G.L. c.55.

I have included a copy of a brochure for public employees for your information. Please do not hesitate to contact this Office should you have additional questions.

Very truly yours,

*Mary F. McTigue*  
Mary F. McTigue  
Director

Enclosure